

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Health

Regulation/Package Title: HB 487 Fee Rules

Rule Number(s): OAC 3701:1-38-02, 3701:1-38-06, 3701:1-54-02 and 3701:1-66-03

Date: 6/29/12

Rule Type:

New

☒ Amended

X 5-Year Review

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

As part of House Bill (HB) 487, the Ohio General Assembly amended the statutory set penalty structure for the handlers of radioactive materials, radiation-generating

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equipment, and certified radiation experts. These statutes amend the current penalties to remove 2 times and 5 times penalty's (200 to 500 percent) of the original invoice fee and replace them with a 10% charge of the original invoice fee after 90 days. The Ohio Department of Health is now amending the rules to parallel the new statutorily established penalties. In addition OAC rule 3701:1-54-02 (Low Level Radiological Waste Generator reporting and fee requirements) is pending 5 year rule review and is being submitted with minor changes.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

RC 3748.04.

3. Does the regulation implement a federal requirement? **NO** Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? **NO**

If yes, please briefly explain the source and substance of the federal requirement.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

N/A However, while fees and penalties are not specifically required, they are a necessary part of the radiation protection programs.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

These regulations fund the Radiation Protection Programs necessary for the radiation safety and protection of Ohio citizens. The rule amendments reduce the 200 and 500 percent late payment penalty fee to a reasonable 10 percent penalty fee. These amendments are intended to expedite payment of invoice fees and reduce undue burden on radiation source owners. In addition OAC rule 3701:1-54-02 (Low Level Radiological Waste Generator reporting and fee requirements) is pending 5 year rule review and is being submitted with minor changes.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The success of these regulations will be measured by prompt payment of invoiced penalty fees.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Radioactive Material Committee and Radiation Generating-Equipment Committee, comprised of experts in the field of radiation safety and representing various types of radiation source users, provided a final review of these regulations. The committees are working groups formed by the Governor-appointed Radiation Advisory Council.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The Radioactive Material Committee and Radiation Generating-Equipment Committee assisted health physics staff in the review of these regulations and approved the draft rules for public comment at their meeting on July 10, 2012 and July 13, 2012 respectively.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

N/A

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

Alternative regulations were not considered as the penalty amount, timing and structure were set by the General Assembly in statute; the rules are being amended to mirror the Revised Code.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

These regulations are performance based, which is a requirement of the regulatory agreement between Ohio and the United States Nuclear Regulatory Commission.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The Ohio Department of Health (ODH) is designated as Ohio's radiation control agency in RC 3748.02 and solely implements and administers all Ohio regulations concerning the possession and use of radioactive material and radiation-generating equipment.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The regulations are implemented through invoicing fees to radioactive material licensee's and radiation-generating equipment registrants. The regulations have reduced substantial penalty fees , 200% to 500% with a nominal 10% penalty fee of the original invoiced amount after the original fee remains unpaid after ninety days.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;

There are currently 982 radioactive material licensees and 10, 000 radiation-generating equipment registrants in Ohio affected by these regulations.

- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

Potential impact on affected radioactive materials licensees and radiation-generating equipment registrants is a reduction of the current 200 and 500 percent late penalty fee to a flat 10 percent penalty fee of the original amount invoiced when a payment is not received by the by the 91st day of the original invoiced date. Accordingly, the impact is not adverse but to reduce the financial burden in the regulated community.

- c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

If original invoiced amount is not paid within ninety days, radioactive material licensees and radiation-generating equipment registrants will incur a ten percent penalty of the original invoiced fee, where before it would have been 200%.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

While the Bureau of Radiation Protection (BRP) is funded by the fees it collects, the Bureau is always looking to ensure that its fees are reasonable and encourage compliance rather than solely punishing the regulated community. The regulations are

needed to ensure that the BRP remains adequately funded to provide adequate radiation protection for the State of Ohio.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

OAC rule 3701:1-38-02(J) provides for reduced license fees for small businesses.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

While Chapter 3748 of the Ohio Revised Code does not preclude fines or penalties to be assessed for paperwork violations, the Ohio Administrative Code does not provide for it and thus, section 119.14 of the Revised Code does not apply.

18. What resources are available to assist small businesses with compliance of the regulation?

Health Physicists and administrative staff at the Ohio Department of Health are routinely available to provide technical advice to licensees and registrants.